



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 13, 1996

Ms. Margaret A. Roll
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR96-0940

Dear Ms. Roll:

You have asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39582.

The Texas Department of Human Services (the "department") received a request for information concerning a contract between the department and Transactive Corporation, which apparently is a subsidiary of GTECH Administrative Services Corporation (the "corporation"). You state that the department has already released some of the requested information. However, you have not released information that the corporation contends is confidential, in accordance with section 552.305 of the Government Code, which provides in pertinent part:

(a) In a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101, 552.104, 552.110, or 552.114, a governmental body may decline to release the information for the purpose of requesting an attorney general decision.

(b) A person whose interests may be involved under Subsection (a), or any other person, may submit in writing to the attorney general the person's reasons why the information should be withheld or released.

The corporation contends that certain portions of the information at issue "constitute confidential information and/or trade secrets." Section 552.110 of the Government Code excepts from disclosure two types of information (1) trade secrets and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. The information submitted to this office for

which the corporation asserts section 552.110 are (1) disclosures about litigation, (2) an entity relationship diagram, and (3) project plans.

This office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a prima facie case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure). The Texas Supreme Court has adopted the definition of the term "trade secret" from the Restatement of Torts, section 757 (1939), which holds a "trade secret" to be

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list or specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939);¹ *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

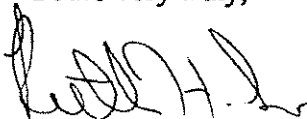
We have reviewed the records at issue and the arguments presented by the corporation. The corporation has not shown the applicability of the trade secret prong to the submitted records. *See* Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). However, the company has shown that the submitted information comes within the commercial or financial aspect of section 552.110, by showing that release of this information would cause substantial

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company's] business; (2) the extent to which it is known by employees and others involved in [the company's business]; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, *supra*, *see also* Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

competitive harm. Open Records Decision No. 639 (1996). Thus, the submitted information may be withheld from disclosure under section 552.110.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 39582

Enclosures: Submitted documents

cc: Ms. Judy Graves
Texas State Employees Union
2656 South Loop West, Suite 345
Houston, Texas 77054
(w/o enclosures)